Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Second Periodic Review of the	)	MB Docket No. 03-15
Commission's Rules and Policies	)	
Affecting the Conversion	)	RM 9832
To Digital Television	)	
	)	
	)	

To: The Commission

PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

Pursuant to Section 1.429(d) of the Commission's rules,[1] the Consumer Electronics Association ("CEA") respectfully files this Petition for Clarification and/or Reconsideration of the Commission's *Report and Order* in the above-captioned proceeding.[2] CEA requests that the Commission clarify its newly adopted rule regarding the functioning of the v-chip in digital television receivers,[3] or in the alternative, amend this rule for the reasons set forth herein. Further, CEA requests that the Commission examine the intellectual property issues related to the implementation of this new requirement.

[1] *See* 47 C.F.R. § 1.429(d) (2003).
[2] *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Report and Order, 19 FCC Rcd 18279 (2004) ("*Second DTV Periodic R&O*").
[3] 47 C.F.R. § 15.120(d)(2). Specific changes are discussed *infra* pp. 3-5.

INTRODUCTION

The Consumer Electronics Association is the principal U.S. trade association of the consumer electronics and information technologies industries. Our members design, manufacture, distribute and sell digital and analog television receivers and monitors and associated electronics, digital video recorders ("DVRs"), video cassette recorders ("VCRs"), direct broadcast satellite radios ("DARS") and television receivers ("DBS", "DCR", and terrestrial broadcast), broadcast AM and FM radios, and similar equipment. Our members also design and manufacture unlicensed devices such as Wi-Fi network devices that connect personal computers, personal digital assistants ("PDAs") and laptops to peripheral devices and networks, cordless phones, baby monitors, and wireless headsets. CEA's more than 1,700 member companies include the world's leading consumer electronics manufacturers.

Program Blocking Functionality Prior to Amendment in the Current Proceeding

The requirement to block programs based on pre-determined user requirements in analog television receivers is a statutory requirement.[4] The Commission's implementing rules[5] rely on the careful work of technical experts in the television industry who developed the EIA-608 and EIA-744 standards, defining both the transmission format and the rating systems.[6] These standards establish the rules of the road so that program creators and broadcasters know how to encode programs, and more importantly,

[4] S*ee* 47 U.S.C. §§ 303(x), 330(c)(4) (2000).
[5] 47 C.F.R. §15.120 - Program blocking technology requirements for television receivers.
[6] CEA attained independent ANSI accreditation in 2003 and assumed direct responsibility for EIA-608, EIA-744, and many other consumer electronics standards formerly designated as "EIA". These standards now carry the same numerical designation with "CEA" replacing "EIA" in the title. For example, EIA-608-B is now CEA-608-B.

television receiver manufacturers know how to build appropriate user interfaces so that consumers can make use of the program blocking functionality. Prior to this proceeding and due to the immaturity of standards for digital content advisory, program blocking in digital television was handled in Section 15.120 by the requirement that "[d]igital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories."[7] In the time since this section was originally drafted, the television community has developed the relevant standard for digital content advisory. In fact, the television community already has begun using it on a voluntary basis, a fact noted by the FCC in this proceeding.[8] This industry standard is known and designated as CEA-766-A.

The Commission's V-Chip Functionality as Adopted in the *Report and Order*

CEA petitioned the Commission to incorporate EIA-766 (now CEA-766-A) into its rules to ensure that the industry implemented digital program blocking in a consistent manner for the benefit of the consumer. In the *Report and Order*, the Commission draws upon the ATSC's comments that:

> the PSIP Standard does provide the ability to extend or replace the content advisory system in the U.S. by assignment of a new, different rating region code. Receivers that are built compliant with CEA standards and recommended practices will support an additional new system with one or more independent categories, each with a series of levels definable by a new RRT.[9]

In the R&O, the Commission acknowledges various expressions of "concern" about the inflexibility of existing televisions to conclude that "receivers must be able to

[7] 47 C.F.R. Section 15.120(d)(2) (2003).
[8] *See Second DTV Periodic R&O*, at ¶ *159.*
[9] *Second DTV Periodic R&O*, at ¶ 156.

process newer RRT version numbers or use new rating region codes as suggested by ATSC."[10] Notwithstanding the fact that the parties most vocal about their concern over v-chip functionality in existing DTVs may have the most to gain financially by this proceeding, CEA believes that the modifications to Section 15.120 and the accompanying language in the R&O, as written, do not clearly accomplish the Commmision's goals.

Following release of the R&O, CEA filed an *ex parte* letter with the Commission in which it confirmed that:

> DTV receivers that comply with the industry standards adopted by the Commission will be able to respond to changes in the content advisory rating system and no new requirement mandates that a receiver must respond to multiple rating systems.[11]

CEA also understands that this requirement is in addition to the existing capability to respond to rating region 0x01 standardized through CEA-766-A. In plain terms, the Commission wants to ensure that DTVs have the capability to respond to a future U.S. rating system not specified at the time the DTV was manufactured. CEA fully supports this goal.

In order to accomplish its goal, the Commission has revised Section 15.120(d)(2) regarding the operation of program blocking for digital television, as follows:

> Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories. Effective March 15, 2006, digital television receivers will receive program rating descriptors transmitted pursuant to industry standard EIA/CEA - 766-A "U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65-A Program and System Information Protocol (PSIP)," 2001 (incorporated by reference, see §15.38). Blocking of programs shall occur when a program rating is received that meets the pre-determined user requirements. Digital television receivers shall be able to respond to changes in the content advisory rating system.

[10] *Id.*
[11] *See* Consumer Electronics Association, *Ex Parte* letter dated Sept. 28, 2004.

The second sentence incorporates into the regulations, as CEA petitioned, the current standard relied upon by DTVs in the U.S. for program blocking. The last sentence attempts to incorporate into the regulations the desired future flexibility.

CEA's Proposed Clarification of Rules Regarding New V-Chip Functionality

The requirement that digital television receivers be able to respond to changes in the content advisory rating system is not incorrect; however, in its current form it is not specific enough for television manufacturers to build DTV sets in a consistent manner. As stated by the ATSC and reiterated in the R&O, the key to a future, unspecified rating system is the "assignment of a new, different rating region code" from rating region 0x01 that is currently linked to CEA-766-A.[12] This new region code can be thought of as the alternate U.S. rating system. It is important to understand that the rating system itself or the Rating Region Table need not be known or specified at this time, and it can be changed in the future. Rather, it is the **region code itself** that must be known in advance by the television receiver so that the appropriate user interface can be designed. Television receivers then can be designed to filter PSIP packets for rating region 0x01 and the alternate rating region. When the alternate rating region is seen, the television also stores its associated, and theretofore unknown, Rating Region Table and uses that information to generate the necessary user prompts for desired program blocking levels. The proposed alternate U.S. rating region is 0x05, for which CEA has requested registration through ATSC's codepoint registry.

[12] *Second DTV Periodic R&O*, at ¶ 156.

In light of the need to establish the alternate region code to properly respond to future changes in the content advisory rating system and the need to update the reference to CEA-766-A, CEA respectfully requests that the FCC clarify its rules, as adopted in the R&O, as follows:

> §15.38 (b)(13) ~~EIA/~~CEA-766-A: "U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65-A Program and System Information Protocol (PSIP)," 2001, IBR approved for §15.120.
>
> §15.120 (d)(2) Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories. Effective March 15, 2006, digital television receivers will receive program rating descriptors transmitted pursuant to industry standard ~~EIA/~~CEA-766-A "U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65-A Program and System Information Protocol (PSIP)," 2001 (incorporated by reference, see §15.38). Blocking of programs shall occur when a program rating is received that meets the pre-determined user requirements. Digital television receivers shall be able to respond to rating region 0x05, representing ~~changes in~~ the alternate U.S. content advisory rating system.

Request for Commission Review to Prevent Competitive Abuse Through the Patent Process

There are important intellectual property issues that must be addressed regarding the implementation of the new rules in their current mandatory form. The fact that the Commission adopted a mandatory rule beyond the standard itself surprised CEA because it was not until the *Report and Order* was released that it became known that mandatory language was even being considered.

It is critical for the Commission to consider that Tim Collings, a Canadian inventor who participated in this proceeding, holds a patent for the technology that may be necessary to enable television manufacturers to implement the new rules. Licenses for

this technology are being offered to manufacturers through Tri-Vision International Limited, a Canadian company in which Mr. Collings serves as a Director. During the course of this proceeding, Mr. Collings participated but did not disclose to the FCC the fact that he claims an essential patent for the technology that the Commission ultimately adopted.[13] An article in the publication "Business Edge" contained the following quotations from Mr. Collings: "We are a (company with earnings of) $10-15 million per year. Our revenues could increase to $100 million per year and that is a conservative figure…"[14] Mr. Collings further noted that "[w]e are the only company that possesses a patent for technology that fits into the new (FCC) standard," says Collings. "We've got a pretty solid case. We're hoping to get 100 per cent of the market in the U.S."

It appears that as a result of the rules change discussed above, Mr. Collings and Tri-Vision are expecting a financial windfall that television manufacturers, and ultimately U.S. consumers, would have to fund. CEA therefore requests that the Commission gather information from the relevant parties to ensure that the licensing terms that Tri-Vision offers comply with the Commission's long-standing precedent that its rules not sanction a monopoly or other competitive abuse through the patent process.[15]

The Commission has always required that patents necessary to permit receivers to be in compliance with its rules be granted (1) on a non-exclusive basis; (2) to all responsible parties; and (3) at reasonable royalties. For example, in 1961 with regard to

[13] *See* Comments of Tim Collings submitted April 7, 2003; Reply Comments of Tim Collings dated May 21, 2003; and *Notice of Ex Parte Contact* dated October 24, 2003.
[14] *Local Inventor Hopes for Windfall with Digital TV*, Business Edge, Oct. 14, 2004 (full article attached as Attachment A).
[15] Tri-Vision has made a proffer to CEA to license "under reasonable terms and conditions that are demonstrably free of any unfair discrimination", as all companies do that claim to have IP associated with a CEA standard. However, in keeping with ANSI standards practice, CEA does not "police" these license agreements. Now that inclusion of specific v-chip functionality is mandatory, it is critical that FCC ensure that the licensing terms offered by Tri-Vision to television manufacturers comport with FCC policy.

rules adopting stereo FM, the Commission required statements from each patent holder that licenses would be granted on reasonable terms for the manufacture, use and sale of the equipment covered by the Commission's rules.[16] More recently, in its proceedings related to digital television the Commission repeatedly held that the proponents would have to make any relevant patents available either free of charge or on reasonable and nondiscriminatory licensing terms.[17] After extensive consideration of the issue at all stages of the proceeding, in 1996 when it adopted the DTV Standard, the Commission premised its adoption "on reasonable and nondiscriminatory licensing of relevant patents" and committed that "if a future problem is brought to our attention, we will consider it and take appropriate action."[18]

Similarly, in the Commission's recent "Broadcast Flag" proceeding, if a technology is to be offered publicly, proponents are required to submit to the Commission, *inter alia*, "a copy of its licensing terms and fees, as well as evidence demonstrating that the technology will be licensed on a reasonable, non-discriminatory basis.[19] In its proceeding to address specific broadcast flag technologies, the Commission reiterated its policy. "When adopting mandatory technical standards, the Commission's

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[16] *See Amendment of Part 3 of the Commission's Rules and Regulations to Permit FM Broadcast Stations to Transmit Stereophonic Programs on a Multiplex Basis*, Docket No.13506, Report and Order, 21 RR 1605 (1961). In 1961 the Commission also established a specific staff to study the assignment and licensing arrangements for patents related to the Commission's rules and to report possible anticompetitive situations, *see Revised Patent Policies of the Federal Communications Commission*, Public Notice, 3 FCC 2d 26 (1961).

[17] *See Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, MM Docket No. 87-268, Notice of Proposed Rulemaking, 6 FCC Rcd 7024 at 7034, ¶ 46 and note 84 (1991); Second Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340 at 3358, ¶¶ 68-69 (1992); Memorandum Opinion and Order/Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 6924 at 6981-82, ¶¶ 78-79 (1992); Fifth Further Notice of Proposed Rulemaking, 11 FCC Rcd 6235 at 6260-61, ¶ 67 (1996).

[18] *Id.* Fourth Report and Order, 11 FCC Rcd 17771 at 17794, ¶¶ 54-55(1996).

[19] *See Digital Broadcast Content Protection*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 02-230, 18 FCC Rcd 23550 at ¶ 53; 47 C.F.R. §73.9008(a)(4) (as amended in this proceeding).

historical focus has been to conduct a sufficient evaluation of the underlying patent rights to extend through standardization. In other words, the Commission attempts to ensure that no mandatory standard should be so dependent on specific patent rights that the cost of that technology to the public would be adversely affected."[20]

In this petition we ask that the Commission undertake the same action with regard to its new DTV v-chip requirement as it promised with regard to the DTV standard and broadcast flag technologies.

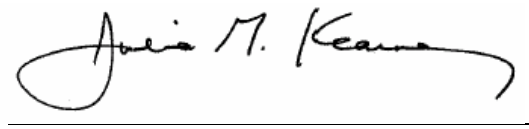
As a final note, CEA observes that it welcomes parties who are interested in future ratings systems to become involved with ATSC and CEA through their standards-setting activities. These systems are complex and require considerable configuration and programming within the television community in order to ensure a positive consumer experience – the ultimate goal.

[20] *See In the Matter of Digital Output Protection Technology and Recording Method Certifications, MagicGate et al.*, MB Docket Nos. 04-55 through 04-66 and 04-68, 19 FCC Rcd 15876 at ¶ 90 (2004).

CONCLUSION

For the reasons set forth herein, CEA respectfully requests that the Commission clarify its new rules regarding v-chip functionality, or in the alternative, to reconsider and amend its rules. Further, CEA requests that the Commission ensure that the licensing terms for any patent or patent(s) necessary to comply with the new rule be reasonable and non-discriminatory.

Respectfully submitted,



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